



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **WAC 458-61-410 (Gifts)**
- **WAC 458-61-411 (Exemption—Irrevocable trusts)**
- **WAC 458-61-412 (Exemption--Inheritances)**
- **WAC 458-61-420 (Government transfers)**
- **WAC 458-61-480 (IRS "tax deferred" exchange)**
- **WAC 458-61-545 (Mortgage insurers)**
- **WAC 458-61-550 (Nominee)**
- **WAC 458-61-590 (Rescission of sale)**
- **WAC 458-61-610 (Rerecord)**
- **WAC 458-61-650 (Tenants in common and joint tenants)**
- **WAC 458-61-670 (Trade-in credit)**

Date last reviewed: **September 1999**

Reviewer: **Ed Ratcliffe**

Date current review completed: **July 15, 2002**

Briefly explain the subject matter of the document(s):

These rules primarily identify transfers of real property that are not subject to the REET, and distinguish these transfers from similar but taxable transfers. They clarify the conditions that must be satisfied, and the documentation needed to substantiate transfers that are not subject to the REET.

WAC 458-61-670 explains the conditions under which a credit for the amount of tax paid on an initial transfer of real property will be allowed against the tax due on the subsequent transfer of other real property.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?



If “yes,” provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

As noted in the previous review of these rules, information from ETA 569.61.411/412 should be incorporated with the information now provided in WAC 458-61-411 and 458-61-412.

Additionally:

- **Det. No. 99-138, 19 WTD 167 (2000) accepts letter sent by government agency before sale that threatened condemnation as evidence of "imminent" threat of condemnation. WAC 458-20-420 should be amended to better address what evidence establishes an "imminent" threat of condemnation. Also see, Det. No. 97-232, 17 WTD 103 (1997)(must show more than agencies authority to condemn land).**
- **Det. No. 95-153, 16 WTD 39 (1995) court judgment of "inverse condemnation" meets exemption. WAC 458-20-420 should incorporate determination.**



- **Det. No. 97-180, 17 WTD 81 (1997) Trade-in credit for single family residence does not include trade of single family home for triplex. WAC 458-20-670 should incorporate determination.**

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

While the information now provided in these rules is generally written in a clear, concise, and effective manner, there are a number of changes that should be made to provide additional clarity or information.

- **WAC 458-61-410 (Gifts) explains that transfers of real property as gifts are not subject to the REET provided the transfer is without consideration or that love and affection is the only consideration. The rule provides a number of examples, all addressing situations dealing with transfers between family members. Additional information and examples addressing gifts made by a person other than an individual (e.g., a corporation) would be helpful.**

This rule should also be revised to address "gifts" to counties for road purposes, and clarify that merely adding or deleting a person to or from title during a refinance does not result in a "gift".

- **Subsection (1)(a) of WAC 458-61-420 (Government transfers) should be deleted. This information is already provided in WAC 458-61-545. Should also consider revision to establish evidence needed by seller that property was sold to government under "imminent" threat of condemnation. See, 19 WTD 167 (2000). Also, rule should be revised to explain that exemption does not extend to private utilities or other non-government entities that have a limited power of eminent domain.**
- **WAC 458-61-480 (IRS "tax deferred" exchange) explains the conditions under which the REET does not apply to the transfer of property by the facilitator under an Internal Revenue Code section 1031 exchange. The REET implications related to what is commonly referred to as a "reverse 1031", which is a situation in which the seller/exchanger is buying replacement property before the sale of the old property, should be addressed in this rule.**
- **HUD, Freddie Mac, and Fannie Mae should be added to the list of exempt entities identified in WAC 458-61-545 (Mortgage insurers). The rule should be also revised to explain that conveyances of real property via deeds to/from intermediary loan servicers, acting on behalf of these types of exempt entities, are also exempt from the REET.**
- **WAC 458-61-550 (Nominee) explains the conditions under which a transfer of property from a nominee to a third party (the second transfer of the nominee process) is not subject to the REET. One requirement is that a notarized statement dated on or prior to the first transaction must be attached to the affidavit for the**



second transaction. The rule should be revised to explain what documentation is acceptable if a statement notarized on or before the original transaction is not available.

The rule does not explain how to document the fact that the proper tax was paid on the initial transaction, which is another requirement for qualifying the tax exemption for the second transaction. The rule should be revised to explain that providing the affidavit number and date of the tax payment for the initial transaction on the REET affidavit for the second transaction will be accepted. This is the same documentation requirement used to document exempt transactions discussed in WAC 458-61-480.

- **WAC 458-61-670 (Trade in Credit)** explains when trade-in credit may be claimed against REET. Rule should incorporate discussion of "single family residence" found in 17 WTD 081(1997).

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **Chapter 82.45 RCW (Excise tax on real estate sales)**
- **Chapter 82.46 RCW (Counties and cities—Excise tax on real estate sales)**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- **ETA 569.61.411/412 (REET—Documentation of transfers by inheritance. Documentation of transfers to and from trusts.)**
- **ETA 568.61.REET (Cancellation of real estate excise tax bulletins)**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 95-153, 16 WTD 039 (1995)--"Inverse condemnation" of property by government is exempt transfer.**
- **Det. No. 97-180, 17 WTD 081 (1997)--Trade in credit does not extend to trade in of single family residence for a triplex.**
- **Det. No. 97-232, 17 WTD 103 (1997)--Must present some evidence of government's intent to use power of eminent domain to claim exemption for sale because of imminent threat of condemnation.**
- **Det. No. 96-168, 17 WTD 308--The sale of stock in a housing cooperative association that owns the land on which improvements are located is not a taxable "sale or transfer of improvements constructed upon leased land."**



- **Det. No. 97-240R, 21 WTD 145 (2002)--Transfer of property with nonrecourse and recourse debt was not a "gift."**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

5. Review Recommendation:

- | | |
|--------------|---|
| <u> x </u> | Amend |
| <u> </u> | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> x </u> | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

WAC 458-61-411 and 458-61-412 should be revised to incorporate information now provided in ETA 569.61.411/412.

The following rules should be revised to provide clarity or to address additional issues, as explained under section 4, above:

- **WAC 458-61-410**
- **WAC 458-61-420**
- **WAC 458-61-480**
- **WAC 458-61-545**
- **WAC 458-61-550**
- **WAC 458-61-670**



These rules may be retained as is:

- **WAC 458-61-590**
- **WAC 458-61-610**
- **WAC 458-61-650**

When making revisions to any rules contained in chapter 458-61 WAC, the drafter should where appropriate consolidate the information provided in this chapter into fewer but more comprehensive rules.

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4